

commissioner concerning the charges pending against Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that he may, at the time this Agreement is effective or within fifteen (15) days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for discipline of Licensee's license.

3. Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.

4. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case or this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in

the event that any court of law deems this Agreement or any portion thereof void or unenforceable.

5. The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

6. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended.

I.

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following:

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts (the "Board") is an agency of the State of Missouri created and established pursuant to § 334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

2. Respondent A. Louis Ojascastro, M.D. ("Licensee"), is licensed by the Board as a physician and surgeon, license number R3J90. Said license was first issued on or about February 8, 1989. Licensee's certificate of registration is current, and was

current and active at all times mentioned herein. Licensee is certified in obstetrics and gynecology.

3. At the time of the acts and events alleged herein, Licensee was practicing in the area of obstetrics and gynecology.

4. In 1993 and 1994, Licensee treated patient M.E. for primary infertility and then provided prenatal care, once she conceived.

5. In September of 1994, an ultrasound examination showed that M.E.'s baby was somewhat large, and Licensee and M.E. decided that labor would be induced a few days prior to the due date in order to insure that the baby's size would not prohibit vaginal delivery.

6. On or about September 22, 1994, Licensee admitted M.E. to St. Joseph's Hospital in Kirkwood, Missouri, at approximately 5:35 p.m., and induction of labor was commenced.

7. The patient did not deliver the baby until September 25, 1994.

8. At approximately 7:00 p.m. on the evening of admission, the fetal heart monitor showed a period of bradycardia, or slowing of the fetal heart rate, lasting several minutes, during which the fetal heart rate decelerated to around 60.

9. At approximately 8:30 a.m. on the third day of admission, September 24, 1994, Licensee ruptured the membranes of M.E.'s bag of waters, and there was evidence of meconium stain in amniotic the fluid upon rupture.

10. Upon rupture or very shortly thereafter, the fetal heart rate decelerated to around 60 beats per minute for 5 minutes, and full recovery did not occur for approximately 10 minutes, after M.E. received oxygen by nasal canula.

11. At approximately 3:15 that afternoon, fetal heart tones again slowed, this time to around 50 beats per minute, for approximately 1 minute, and recovery occurred when M.E. was given oxygen through a face mask.

12. At approximately 9:30 a.m. on September 25, 1994, with the baby positioned high in the birth canal, Licensee attempted vaginal delivery of the baby, using vacuum extraction, without success.

13. Prior to the vaginal delivery attempt, the fetal heart monitor strips showed late decelerations in the baby's heart rate, indicating fetal distress, and these strips were not comprehensively reviewed by Licensee, thus the late decelerations were not addressed.

14. After an attempt to deliver the baby through use of vacuum extraction, fetal heart tones slowed into the 80's over a prolonged period, and M.E. was taken to the operating room for an emergency cesarian section delivery.

15. Upon delivery, the baby was anoxic and unresponsive and was transported to Cardinal Glennon Children's Hospital.

16. The baby suffered permanent and catastrophic injury due to Licensee's failure to recognize the need for and to perform a timely cesarean section delivery.

17. Licensee's treatment of M.E., during her induction, labor and delivery, was below the standard of care for an obstetrician/gynecologist, in that M.E. and her unborn baby were not adequately monitored during induction and labor, and Licensee failed to timely perform a cesarian delivery.

18. In failing to recognize and address the signs of fetal distress during M.E.'s induction, labor and delivery, Licensee failed to use the degree of skill and learning ordinarily used under the same or similar circumstances by members of his profession.

JOINT PROPOSED CONCLUSIONS OF LAW

19. Cause exists to discipline Respondent's license pursuant to § 334.100.2(5), RSMo 2000, which provides, in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

....

(5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public; or incompetency, gross negligence or repeated negligence in the performance of the functions or duties of any profession licensed or regulated by this chapter. For the purposes of this subdivision, "**repeated negligence**" means the failure, on more than one occasion,

to use that degree of skill and learning ordinarily used under the same of similar circumstances by the member of the applicant's or licensee's profession;

. . . .

II.

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Board of Registration for the Healing Arts in this matter under the authority of Section 621.110, RSMo 2000. This Agreement will be effective immediately on the date entered and finalized by the Board.

1. The license to practice the healing arts, number R3J90, issued to Licensee is hereby PUBLICLY REPRIMANDED; and

2. Licensee is further required to attend an additional 25 hours of Category I, IA or 2A continuing medical education (CME) in fetal monitoring. Licensee shall provide the Board with written proof of attendance at and satisfactory completion of the CME coursework within thirty (30) days of completion of the coursework. These hours shall be in addition to the number of mandatory CME hours required for Licensee to renew his license. Licensee agrees to attend the additional continuing education programs within twelve (12) months of the effective date of this Agreement.

In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

LICENSEE

A. Louis Ofascastro 12/14/01
A. Louis Ofascastro, M.D. date

BOARD

Tina Steinman 12/21/01
Tina Steinman date
Executive Director

JEREMIAH W. (JAY) NIXON
Attorney General

Daryl R. Hylton
Daryl R. Hylton
Assistant Attorney General
Missouri Bar No. 35605

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Attorneys for Licensee

Attorneys for Board

EFFECTIVE THIS 21 DAY OF December, 2001.